

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SALVADOR D. RIVAS and JOVITA	:	No. 03-CV-3111
SANCHEZ HERNANDEZ, h/w	:	
	:	
v.	:	
	:	
IMA S.R.L. a/k/a IMA	:	
INTERNATIONAL S.R.L. a/k/a	:	
MAINO S.A.S.	:	

MEMORANDUM OPINION AND ORDER

J. Rufe

January 29, 2004

Before the Court is Defendant Adriano Castella's¹ Motion for Remand Pursuant to Fed. R. Civ. P. 12(b)(1). Because complete diversity is lacking in this case, the Court lacks subject matter jurisdiction, and the Motion is granted.

RELEVANT FACTUAL AND PROCEDURAL HISTORY

The above-captioned matter is a products liability case involving an allegedly defective pasta maker. On March 15, 2003, the case was commenced via writ of summons in the Philadelphia County Court of Common Pleas and was thereafter removed to this Court. In accordance with the Court's directive, Plaintiffs Salvador D. Rivas and Jovita Sanchez Hernandez filed a complaint on July 14, 2003.

According to the Complaint, on April 13, 2001, Rivas, who resides in Naulcalpan, Mexico, was operating a pasta-making machine manufactured by Defendant IMA S.R.L., a corporation organized and existing under the laws of Italy, while he was working at Talluto's

¹ The Complaint identifies Moving Defendant as "Adriano Costello, individually and d/b/a Meridiana Canada, Inc." Throughout his Motion and Memorandum of Law, however, Moving Defendant refers to himself as "Adriano Costella." The Court has used the latter spelling throughout this Memorandum Opinion.

Authentic Italian Foods, Inc. in Norristown, Pennsylvania. Rivas was injured when his arm and hand came into contact with moving, unguarded blades in the machine. Rivas and his wife, who also resides in Mexico, advance negligence, strict product liability, and breach of warranty claims against various foreign and domestic entities and two alien individuals allegedly involved in the design, manufacturing, marketing, advertising, redesign, rebuilding, and distribution of the subject pasta-making machine.²

On December 8, 2003, Costella, a Canadian citizen who is not a permanent resident of the United States, filed the instant Motion for Remand in which he asserts that the Court lacks subject matter jurisdiction over this action.³ In his Motion, Costella contends that Plaintiffs are citizens of Mexico and that neither plaintiff is a resident alien of the United States. Def.'s Mot. for Remand ¶ 4. The Motion further alleges that the various defendants include foreign corporations and individuals that are citizens of Italy and Canada. Because claims are being advanced by non-resident aliens against alien defendants, Costella argues that complete diversity is lacking and, therefore, this Court lacks subject matter jurisdiction over this matter. Since no party has responded to the instant Motion, for the purposes of deciding the jurisdictional

² More specifically, the Complaint advances claims against IMA S.R.L. a/k/a IMA International S.R.L. a/k/a Maino S.A.S., a corporation organized and existing under the laws of Italy; Adriano Costella, individually and d/b/a Meridiana Canada, Inc., a corporation organized and existing under the laws of Canada; Dominion P. USA, Inc. a/k/a Dominion Pasta Machines, a corporation with a place of business in San Francisco, California; Emeliomiti, LLC, a corporation with a place of business in San Francisco, California; Guiseppe Magro, individually and d/b/a Jeka S.R.L., a business operating and existing under the laws of Italy; and Square D Company, a corporation organized and existing under the laws of the Illinois.

³ The Complaint names Costella “[i]ndividually and d/b/a Meridiana Canada, Inc.” Because Costella is an individual who is a citizen of Canada and Meridiana is a corporation organized and existing under the laws of Canada, whether Moving Defendant is an alien individual or an alien corporation is of no consequence because the same arguments regarding lack of diversity apply.

issue the Court accepts as true all factual averments in Costella's Motion for Remand.⁴

STANDARD OF REVIEW

When a case is removed from state court to the district court, federal jurisdictional requirements must be met. Medlin v. Boeing Vertol Co., 620 F.2d 957, 960 (3d Cir. 1980).

Generally, a defendant may remove a case to federal court as long as the federal court would have had jurisdiction over the matter had it originally been filed in federal court. See 28 U.S.C. § 1441. Upon a motion for remand, a party who urges jurisdiction on a federal court bears the burden of establishing that jurisdiction exists. Boyer v. Snap-On Tools Corp. 913 F.2d 108, 111 (3d Cir. 1990). Once a case is removed, it may be remanded if there was a procedural defect or if the court lacks subject matter jurisdiction. See 28 U.S.C. § 1447(c). Removal jurisdiction is to be strictly construed, with all doubts as to its propriety to be resolved in favor of remand. Steel Valley Auth. v. Union Switch and Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987).

DISCUSSION

According to the Notice of Removal filed by Defendant Square D Company, jurisdiction in this case is premised upon the diversity statute, which provides, in part, as follows:

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

(1) Citizens of different States;

⁴ Pursuant to Local Rule 7.1(c), “any party opposing a motion shall serve a brief in opposition, together with such answer or other response which may be appropriate, within fourteen (14) days after service of the motion and supporting brief. In the absence of a timely response, the motion may be granted as uncontested. . . .” The failure of Plaintiffs or any other party to respond, timely or untimely, to the Motion for Remand allows this Court to grant Costella's Motion as uncontested.

- (2) citizens of a State and citizens or subjects of a foreign state;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

For the purposes of this section, section 1334, and section 1441, an alien admitted to the United States for permanent residence shall be deemed a citizen of the State in which such alien is domiciled.

28 U.S.C. § 1332(a). A foreign corporation is deemed to be a citizen of the place where it is incorporated. See Jerguson v. Blue Dot Investment, Inc., 659 F.2d 31, 35 (5th Cir. 1981).

The instant Motion requires the Court to consider alienage jurisdiction. In accordance with 28 U.S.C. § 1332(a)(2),⁵ “federal jurisdiction is authorized where there is a suit between a citizen of a state and citizens or subjects of a foreign state.” Eze v. Yellow Cab Co. of Alexandria, Va., Inc., 782 F.2d 1064, 1065 (D.C. Cir. 1986). The primary reason for alienage jurisdiction under subsection (a)(2) “is to promote international relations by assuring other countries that litigation involving their nationals will be treated at the national level, and alienage jurisdiction is also intended to allow foreign subjects to avoid real or perceived bias in state courts. . . .” Court v. Prot, 85 F.3d 244, 250 (5th Cir. 1996). Like subsection (a)(1), however, subsection (a)(2) requires complete diversity. Eze, 782 F.2d at 1065 (citing Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806)). Alienage jurisdiction may not be maintained in federal court by an alien against a citizen of a state and a citizen of another foreign country. Id.

Here, Plaintiffs are citizens of Mexico, and Defendants include foreign corporations and individuals that are citizens of Italy and Canada. Because there is not complete

⁵ Section 1332(a)(3) of Title 28 of the United States Code is inapplicable because the instant case does not involve a controversy between diverse citizens joined with aliens.

diversity, this Court lacks subject matter jurisdiction over Plaintiffs' claims. See Karazano v. Madison Two Assocs., 147 F.3d 624 (9th Cir. 1998); Eze, 782 F.2d at 1065 ("A diversity suit in line with the Strawbridge rule may not be maintained in federal court by an alien against a citizen of a state and a citizen of some other foreign country."); Field v. Volkswagenwerk AG, 626 F.2d 293, 296 (3d Cir. 1980) ("[The complete diversity] requirement applies to suits between aliens as well as to suits between citizens."); see also 15 James W. Moore, Moore's Federal Practice ¶ 102.77 (3d ed. 1997) (noting that "when an alien plaintiff sues an alien and a citizen of the United States, there is no diversity jurisdiction"). Because it appears that this case was improvidently removed and jurisdiction is lacking, the matter is hereby remanded to state court in accordance with 28 U.S.C. § 1447(c).

CONCLUSION

For the foregoing reasons, Defendant Adriano Costella's Motion for Remand Pursuant to Fed. R. Civ. P. 12(b)(1) is granted. An appropriate Order follows.

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ORDER

AND NOW, this 29th day of January, 2004, upon consideration of Defendant Adriano Castella's Unopposed Motion for Remand Pursuant to Fed. R. Civ. P. 12(b)(1) [Doc. No. 15], it is hereby ORDERED and DECREED that the Motion is GRANTED. Pursuant to 28 U.S.C. § 1447(c), the above-captioned matter is hereby REMANDED to the Philadelphia County Court of Common Pleas. The Clerk of this Court shall forthwith cause the file and record to be delivered to the Prothonotary of the Philadelphia County Court of Common Pleas.

The Clerk is directed to close this case for statistical purposes.

BY THE COURT:

CYNTHIA M. RUFÉ, J.